



October 11, 2001

Mr. Therold I. Farmer
Attorneys for Liberty Hill I.S.D.
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P.O. Box 2156
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OR2001-4618

Dear Mr. Farmer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153144.

The Liberty Hill Independent School District (the "district"), which you represent, received a request for several categories of information regarding a former district superintendent. You indicate that you have released some of the requested information to the requestor. You state that the district does not have any information responsive to category five of the request.¹ You claim, moreover, that some of the requested information is excepted from disclosure under sections 552.101, 552.102, 552.107, 552.111, 552.131, and 552.305 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that the information submitted in "Document 1" is excepted from disclosure under section 552.107 of the Government Code. Section 552.107(1) of the Government Code excepts information "that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct[.]" While section 552.107(1) appears to apply to information within rule 1.05 of the Texas Disciplinary Rules of Professional Conduct, this office has determined that section 552.107 cannot be applied as broadly as written to information in the possession of an attorney for a governmental body. Open Records Decision No. 574 (1990). Section 552.107(1) was found to protect only the attorney's communication of legal advice or

¹ We note that the Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

opinion to the client and communications from a client to an attorney where those communications are made in confidence and in furtherance of the attorney rendering professional legal service to the governmental body. *Id.* at 5. Moreover, section 552.107(1) does not except purely factual information from disclosure. *Id.* We determine the applicability of section 552.107(1) on a case-by-case basis. Upon careful review of your arguments and the submitted information, we agree that the information in "Document 1" reflects client confidences. The district may therefore withhold the information in "Document 1" under section 552.107.²

With respect to the remaining submitted information, we note that the request for information submitted to the district is not from a member of the public but from another governmental entity. We ruled in Open Records Decision No. 661 (1999) that whether a governmental entity may release information to another governmental entity is not a question under the Public Information Act (the "Act") as the Act is concerned with the required release of information to the *public*. Gov't Code §§ 552.001, .002, .021; *see* Attorney General Opinions, H-683 (1975), H-242 (1974), M-713 (1970); Open Records Decision No. 655 (1997). For many years, this office has recognized that it is the public policy of this state that governmental bodies should cooperate with each other in the interest of the efficient and economical administration of statutory duties. *See, e. g.*, Attorney General Opinion H-836 (1976); Open Records Decision No. 655 (1997). *But see* Attorney General Opinions DM-353 at 4 n. 6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute's enumerated entities), JM-590 (1986) (same); Open Records Decision No. 655 (1997) (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). In adherence to this policy, this office has acknowledged that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); Open Records Decision Nos. 655 (1997), 414 (1984). Accordingly, the district has the discretion to release the remaining submitted information to the Marion County Attorney. However, should you decline to exercise that discretion, you must nonetheless adhere to the following decision regarding the applicability of your claimed exceptions to the remaining submitted information.

You inform this office that you have previously sought decisions about some of the information responsive to the present request. In Open Records Letter No. 97-0347 (1997), we concluded that the district could withhold the letter submitted in "Document 2" under section 552.101 of the Government Code. In Open Records Letter No. 97-0760 (1997), we concluded that the district could withhold the letters submitted in "Document 3" under section 552.101. In Open Records Letter No. 97-0760 (1997), we also concluded that the

² As we are able to make this determination, we need not address your other claimed exceptions with respect to "Document 1."

district could withhold portions of the settlement agreement submitted in "Document 3" under section 552.117 of the Government Code. Therefore, as the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, the district must withhold the information in "Document 2" and "Document 3" in accordance with Open Records Ruling Nos. 97-0347 (1997) and 97-0760 (1997), respectively.³

Next, you claim that any responsive certified agendas of closed sessions of meetings of the district's Board are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code.⁴ We agree. Section 551.104(c) provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Gov't Code § 551.104(c). Such information cannot be released to a member of the public in response to an open records request. See Open Records Decision No. 495 (1988). Therefore, to the extent that the district maintains certified agendas that are responsive to the present request, those agendas must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

To summarize, we conclude that the district may withhold the information in "Document 1" under section 552.107, and that the district has the discretion to release the remaining submitted information to the Marion County Attorney. If the district declines to exercise this discretion, we conclude that: (1) the district must withhold the information in "Document 2" and "Document 3" in accordance with Open Records Ruling Nos. 97-0347 (1997) and 97-0760 (1997), respectively; and (2) to the extent that the district maintains certified agendas that are responsive to the present request, those agendas must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code. Based on these findings, we need not reach your remaining arguments.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

³The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. See Open Records Decision No. 673 (2001).

⁴ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

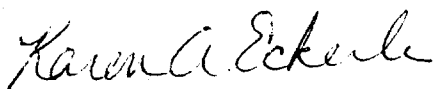
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 153144

Enc: Submitted documents

c: Mr. James P. Finstrom
County Attorney
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(w/o enclosures)